



California Fair Political Practices Commission

September 12, 1989

Dayne H. Webb
55 Brookwood Drive
Susanville, CA 96130

Re: Your Request for Informal Assistance
Our File No. I-89-415

Dear Ms. Webb:

This is in response to your letter requesting assistance with respect to the conflict-of-interest provisions of the Political Reform Act.^{1/} Since your advice request does not refer to a specific governmental decision, but instead seeks general guidance, we are treating your request as one for informal assistance.^{2/}

QUESTION

If elected as a member of the Lassen Community College Board of Trustees, what potential conflict of interest situations must you avoid?

CONCLUSION

As a public official, you will be prohibited from making, participating in making or in any way attempting to use your official position to influence a governmental decision which will foreseeably have a material financial effect, distinguishable from the effect on the public generally, on you or your immediate family or on any source of income aggregating \$250 or more received by or promised to you within 12 months prior to the decision.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS

You are planning to file nomination papers for trustee of Lassen Community College for the November election. However, you have become concerned about possible conflicts of interest that may confront you as a trustee. Up to July 1, 1989 you and your spouse were the sole shareholders in a corporation that owned the only two radio stations in Lassen County. The corporation was sold to its new owners through financing that you have provided. You will be receiving payments from the purchaser. In addition, up to July 1, 1989, while under your ownership, your corporation did a substantial amount of business in Susanville. You are concerned that the income provided to your corporation may impede your ability to function as a trustee for the Lassen Community College. You have asked specifically about voting on decisions to make purchases and to approve pay warrants once the purchases have been made.

ANALYSIS

The Political Reform Act (the "Act"), was enacted by the people of the State of California by initiative in 1974. The purpose for the conflict-of-interest provisions of the Act was to ensure that public officials, whether elected or appointed, would perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001(b).)

In furtherance of this goal, Section 87100 of the Act prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. A "public official" is defined in Section 82048 and Regulation 18700 (copy enclosed) as every natural person who is a member, officer, employee, or consultant of a state or local government agency. This definition would include a member of the Lassen Community College Board of Trustees. (Martinez Advice Letter, No. I-88-473, copy enclosed.)

Section 87103 specifies that a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family or on:

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

In your letter you discussed a variety of sources of income that you are concerned might be disqualifying financial interests.

Any person or business that has made any payment to you in the past 12 months is a source of income to you for the purposes of Section 87103. Thus, the purchaser of your business is a source of income to you and will continue to be a source of income to you for 12 months after the final payment is made. (Flick Advice Letter, No. A-84-248, copy enclosed.) In addition, Section 82030 provides that the income of an individual also includes a pro-rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. (Russell Advice Letter, No. A-88-484, copy enclosed.) Thus, those persons that paid your radio stations \$250 or more for advertising time in the past 12 months are sources of income to you.^{3/}

Consequently, any person or business that has made a payment to you or your business is regarded a source of income to you. If any person or business has been a source of income to you of \$250 or more within the past 12 months prior to a decision under consideration by the community college district, they are a disqualifying financial interest as defined in Section 87103 and you may not participate in any decision that will reasonably foreseeably have a material financial effect on that person or business.

Whether the financial consequences of a decision are reasonably foreseeable at the time a governmental decision is made depends on the facts of each particular case. An effect is considered reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (In re Thorner (1975) 1 FPFC Ops. 198, copy enclosed.)

In addition, the foreseeable effect on your source of income must also be material to require disqualification. The Commission has adopted differing guidelines to determine whether an effect is material, depending on the specific circumstances of each decision. For example, where a source of income is directly before the board of trustees, as an applicant or the subject of the decision, Regulation 18702.1(a) (copy enclosed) provides that the effect of the decision on a source of income is deemed material and disqualification is required. (Combs Advice Letter, No. A-89-177, copy enclosed.)

A source of income is directly before the board of trustees when the source initiates the proceeding by filing an application, claim, appeal, or similar request, or is a named party in, or the

^{3/} Section 87103.5 provides a limited exception to the conflict of interest laws for income from "retail sales." For purposes of this analysis, we have not considered the sale of radio advertising time a "retail sale."

subject of, the proceeding. A person or business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity. (Regulation 18702.1(b).) This would include decisions to make purchases from and to pay warrants to the source of income.

Where the source of income is not directly before the board of trustees, but may be indirectly affected, Regulations 18702.2 and 18702.6 (copies enclosed) apply. Whether the indirect effect on a business is material depends on the financial size of the business entity. Regulation 18702.2 provides differing standards of materiality which apply where a business entity is listed on the New York Stock Exchange or American Stock Exchange or Fortune Magazine Directory of the 500 largest U.S. Industrial Corporations (Regulation 18702.2(a) and (d)); or where the business entity is listed on the National Association of Securities Dealers National Market List (Regulation 18702.2(b), (e) and (f)); or where the business entity is listed on the Pacific Stock Exchange (Regulation 18702.2(c)).

Regulation 18702.2 provides that for a relatively small business entity, the indirect effect of a decision is material where:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in the increase or decrease in the value of assets or liabilities of \$10,000 or more.

Finally, where a source of income is a person and not directly before the board of trustees, Regulation 18702.6 provides:

The effect of a decision is material as to an individual who is a source of income or gifts to an official if any of the following applies:

(a) The decision will affect the individual's income, investments, or other tangible or intangible assets or liabilities (other than real property) by \$1,000 or more; or

(b) The decision will affect the individual's real property interest in a manner that is considered material under Section 18702.3 or Section 18702.4.^{4/}

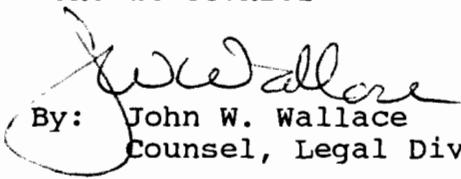
However, even if you determine that you have a financial interest that will be financially affected by the decision, you still may participate if the effect on your interests is not distinguishable from the effect on the public generally. The "public" consists of the entire jurisdiction of the agency in question. (In re Owen (1976) 2 FPPC Ops. 77, copy enclosed.) For the "public generally" exception to apply, the decision must affect your interests in substantially the same manner as it will affect a significant segment of your jurisdiction. (Regulation 18703, copy enclosed; In re Legan, supra.) This is so because all the residents of your jurisdiction are your constituents. (In re Legan, supra.) Since we have not been provided with the facts of a particular decision, we can only provide this general outline.

In summation, as a Lassen Community College Trustee you may not participate in any decision in which a source of income of \$250 or more in the preceding 12 months is directly involved, if the decision will have any measurable effect on the source of income. In addition, you may not participate in any decision indirectly affecting a source of income of \$250 or more in the preceding 12 months if the decision will foreseeably and materially affect the source of income. Whether a particular effect is material would be determined by examining the extent of the foreseeable financial effect on the source of income. In either case, the "public generally" exception would permit you to participate in any decision which affects your source of income in substantially the same manner as most of the residents or businesses of the district.

I trust this letter has addressed your concerns. Should you have any further questions regarding this matter or a specific decision that you would like advice on, please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh
Enclosures

^{4/} Regulations 18702.3 and 18702.4 have been enclosed for your information.

FPPC

July 10, 1989

JUL 13 12 10 PM '89

Mr. John McLean
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento CA 94814

Dear Mr. McLean:

I recently listened to a recording of your presentation to Lassen County officials regarding Conflicts of Interest. I plan to file nomination papers shortly for trustee of Lassen Community College and want to be sure that I am clear on your Conflict of Interest standards.

On July 1, 1989, my husband and I sold the assets of our corporation, which owned the only radio stations in Lassen County. We were the sole stockholders. We are financing the new owner's purchase. We are also still collecting June accounts receivable and "slow pays."

The radio stations do business with most businesses in Susanville. Since our town is isolated, Lassen College does business with many businesses in town also. Lassen College could not buy a pound of coffee, a piece of lumber, a car, a first aid kit, a poster board, a kilowatt of electricity or make a phonecall without doing business with a business that spends \$250 annually with the radio stations.

If I understand your comments to the Supervisors, I believe that if I am elected in November, I will have to refrain from participating in any way in the decision for the College to buy from or pay for any business that had spent \$250 for advertising with the radio stations in the previous 12 months ending June 30, 1989. By July 1, 1990, a year after we sold the radio stations, I would be free to vote to pay warrants except those to the radio stations.

I look forward to hearing from you shortly. I am quite concerned about the cumbersomeness of well-meaning citizens wishing to work for their community, yet being restricted as it appears in my situation. I'll be out of town July 18 to 26, but hope to hear from you sometime this month.

Sincerely,



Dayne H. Webb

55 Brookwood Drive
Susanville CA 96130
916/257-5442

FPPC

July 10, 1989

Jul 13 12 10 PM '89

Mr. John McLean
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento CA 94814

Dear Mr. McLean:

I recently listened to a recording of your presentation to Lassen County officials regarding Conflicts of Interest. I plan to file nomination papers shortly for trustee of Lassen Community College and want to be sure that I am clear on your Conflict of Interest standards.

On July 1, 1989, my husband and I sold the assets of our corporation, which owned the only radio stations in Lassen County. We were the sole stockholders. We are financing the new owner's purchase. We are also still collecting June accounts receivable and "slow pays."

The radio stations do business with most businesses in Susanville. Since our town is isolated, Lassen College does business with many businesses in town also. Lassen College could not buy a pound of coffee, a piece of lumber, a car, a first aid kit, a poster board, a kilowatt of electricity or make a phonecall without doing business with a business that spends \$250 annually with the radio stations.

If I understand your comments to the Supervisors, I believe that if I am elected in November, I will have to refrain from participating in any way in the decision for the College to buy from or pay for any business that had spent \$250 for advertising with the radio stations in the previous 12 months ending June 30, 1989. By July 1, 1990, a year after we sold the radio stations, I would be free to vote to pay warrants except those to the radio stations.

I look forward to hearing from you shortly. I am quite concerned about the cumbersomeness of well-meaning citizens wishing to work for their community, yet being restricted as it appears in my situation. I'll be out of town July 18 to 26, but hope to hear from you sometime this month.

Sincerely,



Dayne H. Webb

55 Brookwood Drive
Susanville CA 96130
916/257-5442



California Fair Political Practices Commission

July 14, 1989

Dayne H. Webb
55 Brookwood Drive
Susanville, CA 96130

Re: Letter No. 89-415

Dear Mr. Webb:

Your letter requesting advice under the Political Reform Act was received on July 13, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
General Counsel

KED:plh